

**FILED**

**JUN 14 2018**

SUSAN Y. SOONG  
CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
SAN FRANCISCO DIVISION

Carl Alexander Wescott,

Plaintiff

) Case Number CV 17-5676-LB

)

) FIRST AMENDED COMPLAINT FOR

) DECLARATIVE AND INJUNCTIVE RELIEF

) AND DAMAGES FROM RACKETEERING;

) CONSPIRACY TO ENGAGE IN A PATTERN

) OF RACKETEERING ACTIVITY; FRAUD;

) ABUSE OF PROCESS; INVASION OF

) PRIVACY; INTENTIONAL INFLICTIONAL

) OF EMOTIONAL DISTRESS AND BREACH OF

FIDUCIARY DUTY

JURY TRIAL REQUESTED

SC Anderson, Inc.;

Herrig & Vogt, LLP;

Moe's Process Serving, Inc.;

Defendants

1. Plaintiff Carl Wescott ("Plaintiff") is an individual and resident in San Francisco.
2. Defendant SC Anderson, Inc. ("Anderson") is a California corporation with its principal office in Bakersfield, California and satellite offices in Arizona, Nevada and New Mexico. Anderson is a major construction company.

- 1
- 2 3. Herrig & Vogt ("HV") is a California limited liability partnership with its principal place
- 3 of business in Granite City, California. HV is the attorney and agent of Anderson.
- 4
- 5 4. Defendant Moe's Process Serving Inc. ("Moe's") is a California corporation with its
- 6 principle place of business in Sacramento California. Moe's is an agent of Vogt and sub-
- 7 agent of Anderson.
- 8 5. Jurisdiction is vested in this Court pursuant to 18 USC 1961 et seq and venue is proper in
- 9 this District as it was the focus of the criminal activity, the location of Surprise
- 10 Development (and thus where Defendant should have filed the lawsuit they fraudulently
- 11 concealed in another county), and location of the Plaintiff, the individual Defendant in
- 12 SC Anderson's fraudulent legal action, and is also the location of the recent unnecessary
- 13 legal action by Defendant against Plaintiff (Adversary Proceeding in Plaintiff's
- 14 bankruptcy).
- 15
- 16

#### 17 **Enterprise & Underlying Conspiracy**

18

- 19 6. This cases arises out of a contract between Anderson and Surprise Development
- 20 ("Surprise"), a long defunct California S Corp. owned and managed by the Plaintiff up to
- 21 approximately six years ago. Anderson provided design and engineering services to
- 22 Surprise, and the firms envisioned and planned on Anderson providing construction
- 23 services to Surprise. Reverses in the economy made it impossible for Surprise to pay for
- 24 the design and engineering services Anderson provided on a project. At all times,
- 25 Anderson was aware of the risk that Surprise would be unable to pay and Anderson has
- 26 admitted as much in Madera County pleadings. Realizing that Surprise was losing its
- 27
- 28

assets of value and that the underlying contract was non-recourse (e.g. not personally guaranteed by the Plaintiff) the Defendants entered into a scheme to impose extra-contractual personal liability on the Plaintiff by: (a) faking a fraud case in general and against the Plaintiff specifically; (b) obtaining a personal judgment in stealth thus preventing him from raising dispositive contractual defenses; (c) obtaining the default in knowing violation of the Plaintiff's automatic stay in bankruptcy and then; (d) extortionately using that wrongful and void default to obtain the Plaintiff's money and/or property. The Defendants took these steps despite the fact that the Plaintiff had minimal contact with Anderson during the project in question and made none of the representations that Anderson later tried to characterize as fraudulent.

7. Anderson, HV and Moe's engaged in the following predicate acts, sufficing to trigger liability under 18 USC 1961 (4) (5) and (9) and 18 USC 1962 (c):

- (a) Defendants HV and Anderson filed sham litigation in Kern County and Madera County against the Plaintiff. The litigation was fraudulent and a sham because the Plaintiff individually made no important representations to Anderson – as the Defendants well knew – and because the Defendants never relied on *any* representations, having recently judicially admitted in Madera County filings that they were specifically aware of the risk that the Kern County Defendants would not acquire the property in question with the result that Defendant Anderson would not be paid for its services.
- (b) The litigation was also fraudulent and a sham because the Defendants never intended to serve the Plaintiff or afford him an opportunity to defend himself.
- (c) On October 31<sup>st</sup> 2011 (“Alleged Service Date”), and on November 1<sup>st</sup>, 2011 (“Perjurious Proof of Service date”) Moe's, acting for and jointly with the other defendants, perjurally certified a fraudulent proof of service on the Defendant in connection with a state court action brought by SC Anderson (“the State Court Case”). On the day of the alleged service Plaintiff and his now-ex-wife were both in Santa Barbara. Moe's certified that a lady was served at Plaintiff's house, with black hair. Plaintiff's ex-wife was blonde and of completely different height and weight than what the proof of service certified. In certifying and transmitting the fraudulent proof of service, Moe's utilized both mails and the wires in violation of 18 USC 1961.
- (d) Contemporaneously, acting for and jointly with the other defendants, Moe's unlawfully accessed and tampered with the defendant's mail by gaining unauthorized access to his closed United States Postal mailbox, in violation of 18 USC 1708. This was in aid of an attempt to extort the Plaintiff within the meaning of 18 USC 375 et seq.

- (e) The Plaintiff filed for United States Bankruptcy protection and so informed defendant HV (with a phone call to George Vogt) on or about December 13, 2011, which is the date the automatic stay in Plaintiff's bankruptcy case issued. Plaintiff informed George Vogt ("GVogt") that he had not been served, that Anderson was being named in Plaintiff's chapter 7, and that he was planning on leaving the country soon.
- (f) Despite knowledge of the Plaintiff's pending bankruptcy and federal court orders not to take legal action against Plaintiff, HV, acting for and jointly with the other Defendants, willfully and contumaciously violated the Plaintiff's automatic stay by filing for default in the State Court Case. HV's filing, which was effected electronically, represents an independent use of the wires to perpetrate a fraud in violation of 18 USC 1961 – the fraud not only utilized Moe's fraudulent declaration but also consisted of omitting to disclose the pendency of Plaintiff's bankruptcy and existence of the automatic stay to the State Court in obtaining the State Court Case default. As an officer of the Court, HV (as well as GVogt personally) had a duty to disclose relevant facts to the Court.
- (g) HV then attempted to enforce the wrongfully obtained default which they knew and subsequently admitted to be void ab inito to extortionately obtain money from the Plaintiff at his 341 meeting in 2016 and for years thereafter.
- (h) Accordingly, the predicate acts of the enterprise (consisting of SC Anderson, its agent HV and its sub-agent Moe's) included *at least* mail tampering and mail and wire fraud and attempted extortion by Moe's, independent acts of wire fraud and extortion by HV, fraud on the court by HV all performed at the direction and for the benefit of principal SC Anderson.

8. The Plaintiff has strong reasons to believe that SC Anderson and its agent HV conceived and directed this fraudulent scheme. These include:

- (a) The Kern County litigation was sham litigation within the meaning of federal law: (a) objectively baseless and; (b) subjectively intended to abuse process. Thus, the *Noerr Pennington* protection for petitioning activity does not apply. Specifically (for the reasons that follow) SCA and HV alleged fraud against the Plaintiff without a good faith basis for believing that he had in fact engaged in fraudulent activity as a means to obtain the benefit of a personal guarantee they never negotiated.
- (b) The filing of the sham litigation was itself an act of fraud within the ambit of the RICO statute because the Plaintiff had the right to rely on the truthfulness of the representations of HV as California attorneys. Business & Professions 6068.
- (c) The Plaintiff had very little personal interaction with Anderson during the period of the Surprise Development. The Plaintiff did not discuss, represent, or negotiate with SC Anderson, and simply attended one meeting, one conference calls and signed paperwork. Therefore there would have been no legitimate reliance on any statements by the Plaintiff on the part of Anderson.
- (d) Anderson has admitted that it was expressly aware of the risk presented by the fact that the Surprise Development team did not actually own the Property in question but had every reasonable expectation of doing so. Attached as

Exhibit "A" is a complaint recently filed by Anderson in Madera County following the Stipulated admission that HV violated the Plaintiff's automatic stay. In paragraph 28 of this Complaint, Anderson admits that it had knowledge of the fact that Surprise did not actually own the property and may not gain ownership. Anderson not only did not rely on Plaintiff; they had no basis for reliance at all.

- (e) Anderson took the calculated risk that the Surprise financing would not go through with the plan all along of wrongfully suing the Plaintiff should their business risk not play out as they hoped.
- (f) Anderson's agent H&V deliberately violated the Plaintiff's automatic stay in wrongfully obtaining a Default.
- (g) Anderson's agent H&V lied to the Courts in Kern and Madera County by Omission and Commission and attempted to enforce the wrongfully obtained Default at the Plaintiff's meeting of creditors years after obtaining it.
- (h) HV's attempt in 2016 and thereafter to collect a debt from the Plaintiff based on a judgment they knew to have violated the Plaintiff's automatic stay was extortionate in that H&V possessed the specific intent to obtain the Plaintiff's money and property based on a default HV attorneys knew to be void ab initio in aid of an effort to intimidate the Plaintiff.
- (i) In short, Anderson's fraud case was itself an outrageous fraud and planned from the first as a fallback position if it lost its calculated gamble that Surprise would obtain financing and close on the property.

9. The criminal acts of the defendants have played out over a period of more than six years, more than meeting the RICO standard for continuity. The Defendants – consistent with their plan - did not disclose their fraudulently obtained default to the Plaintiff until a meeting of his 341 creditors in December 2016 (at which H&V attempted to enforce the void default), making it difficult to impossible for him to overturn the default in the State Court Case. The Defendants knew that default to be void ab initio but extortionately attempted to use it to intimidate the Plaintiff into surrendering his money and property.
10. The defendants have since pursued aggressive collection and harassment efforts that have included completely needless litigation in federal court with the aid of the fraudulently obtained judgment in the State Court Case. (In the course of the federal litigation, Defendant H&V concealed the existence of a Stipulation admitting that Anderson violated the Plaintiff's automatic stay, from a bankruptcy judge which elicited comment from that Judge in issuing her Tentative Ruling). The Defendants' collection efforts have

1 imposed tremendous emotional stress on the Plaintiff and have crippled his ability to  
2 develop new business opportunities.

3 11. The Defendants have conspired directly and through their agents, officers and employees  
4 to tamper with the Plaintiff's mail; secure a fraudulent judgment based on a perjurious  
5 certification; defraud the State Court through the use of an electronic filing; and extort  
6 payment from the Plaintiff through e-mails, phone calls, and the harassment of needless  
7 litigation.  
8

9 12. The Plaintiff was an international real estate developer and consultant, with projects in  
10 Louisiana and in other countries such as Panama, Uruguay, Nicaragua and Ecuador. The  
11 actions of the Defendants have impacted interstate and international commerce by  
12 inhibiting and interfering with the Plaintiff's ability to source and close transactions in  
13 California, Louisiana and other locations.  
14

15 13. The Plaintiff asks that this Court liberally construe the RICO laws and thereby find that  
16 all Defendants have associated with a RICO *enterprise* of *persons* and of other  
17 individuals who were associated in fact, all of whom did engage in, and whose activities  
18 did affect, interstate and foreign commerce in violation of the RICO law at 18 U.S.C.  
19 1962(c) (Prohibited activities described in more particularity in paragraph 7, *Supra*).  
20

21 14. The Plaintiff asks this Court liberally construe the RICO laws and thereby find that all  
22 Defendants have conducted and/or participated, directly or indirectly, in the affairs of  
23 said RICO *enterprise* through a *pattern of racketeering activity* in violation of the RICO  
24 laws at 18 U.S.C. §§ 1961(5) ("pattern" defined) and 1962(c) *supra*.  
25

26 15. The Plaintiff asks this Court that all Defendants and all of their directors, officers,  
27 employees, agents, servants and all other *persons* in active concert or in participation  
28 with them, be enjoined *temporarily* during pendency of this action, and *permanently*



thereafter, from associating with any RICO *enterprise of persons*, or of other individuals associated in fact, who do engage in, or whose activities do affect, interstate and foreign commerce.

**COUNT ONE:**

Acquisition and Maintenance of an Interest in and Control of  
an *Enterprise Engaged in a Pattern of Racketeering Activity*:

18 U.S.C. §§ 1961(5), 1962(b)

16. Plaintiff realleges paragraphs 1-15 as if fully set out herein. Substance prevails over form.

17. At various times and places all Defendants did acquire and/or maintain, directly or indirectly, an interest in or control of a RICO *enterprise* of individuals who were associated in fact and who did engage in, and whose activities did affect, interstate and foreign commerce, all in violation of 18 U.S.C. §§ 1961(4), (5), (9), and 1962(b).

18. During the six (6) and a half calendar years preceding June 12<sup>th</sup>, 2018, all Defendants did cooperate jointly and severally in the commission of two (2) or more of the RICO predicate acts that are itemized in the RICO laws at 18 U.S.C. §§ 1961(1)(A) and (B), and did so in violation of the RICO law at 18 U.S.C. 1962(b) (Prohibited activities) including acts of mail fraud, wire fraud and extortion.

19. Plaintiff further alleges that all Defendants did commit two (2) or more of the offenses itemized above in a manner which they calculated and premeditated intentionally to threaten continuity, *i.e.* a continuing threat of their respective *racketeering activities*, also in violation of the RICO law at 18 U.S.C. 1962(b) *supra* including the cynical corruption and manipulation of the State Court Case and the extortionate attempts to collect from the Plaintiff based on a default judgment which the Defendants knew (and subsequently

admitted that they knew) to be void ab ignition.

20. Pursuant to the original Statutes at Large, the RICO laws itemized above are to be *liberally* construed by this honorable Court. Said construction rule was never codified in Title 18 of the United States Code, however. See 84 Stat. 947, Sec. 904, Oct. 15, 1970.

21. Based on the legal doctrine of Respondeat Superior, a principal is legally responsible for the wrongful and illegal acts of its agents and sub-agents. Thus, not only are Anderson, H&V, and Moe's collectively liable for the illegal acts in their criminal conspiracy, but Anderson is also legally responsible for the acts of its agent H&V and its sub-agent Moe's. For this specific count, the principal Anderson is liable for the agents' and subagents' misconduct: knowledge of, participation in, and benefit from a RICO enterprise.

### **COUNT TWO:**

Conduct and Participation in a RICO *Enterprise*  
through a *Pattern of Racketeering Activity*:  
18 U.S.C. §§ 1961(5), 1962(c)

22. Plaintiff now re-alleges each and every allegation as set forth above, and hereby incorporates same by reference, as if all were set forth fully herein. Substance prevails over form.

23. At various times and places partially enumerated in Plaintiff's Complaint above, all Defendants did associate with a RICO *enterprise* of individuals who were associated in fact and who engaged in, and whose activities did affect, interstate and foreign commerce.



- 1 24. Likewise, all Defendants did conduct and/or participate, either directly or indirectly, in  
 2 the conduct of the affairs of said RICO *enterprise* through a *pattern of racketeering*  
 3 *activity*, all in violation of 18 U.S.C. §§ 1961(4), (5), (9), and 1962(c).  
 4
- 5 25. During the six (6) and a half calendar years preceding June 12<sup>th</sup>, 2018, all Defendants did  
 6 cooperate jointly and severally in the commission of two (2) or more of the RICO  
 7 predicate acts that are itemized in the RICO laws at 18 U.S.C. §§ 1961(1)(A) and (B),  
 8 and did so in violation of the RICO law at 18 U.S.C. 1962(c) (Prohibited activities).  
 9
- 10 26. Plaintiff further alleges that all Defendants did commit two (2) or more of the offenses  
 11 itemized above in a manner that they calculated and premeditated intentionally to  
 12 threaten continuity, *i.e.* a continuing threat of their respective *racketeering activities*, also  
 13 in violation of the RICO law at 18 U.S.C. 1962(c) *supra*.  
 14
- 15 27. Pursuant to 84 Stat. 947, Sec. 904, Oct. 15, 1970, the RICO laws itemized above are to be  
 16 *liberally* construed by this honorable Court. Said construction rule was never codified in  
 17 Title 18 of the United States Code, however. *Respondeat superior* (as explained above).  
 18

### **COUNT THREE:**

19 Conspiracy to Engage in a  
 20 *Pattern of Racketeering Activity*:  
 21 18 U.S.C. §§ 1961(5), 1962(d)  
 22

- 23 28. Plaintiff now re-alleges each and every allegation as set forth above, and hereby  
 24 incorporates same by reference, as if all were set forth fully herein. Substance prevails  
 25 over form.  
 26
- 27 29. At various times and places partially enumerated in Plaintiff's Complaint above all  
 28 Defendants did conspire to acquire and maintain an interest in a RICO *enterprise*

engaged in a *pattern of racketeering activity*, in violation of 18 U.S.C. §§ 1962(b) and (d).

30. At various times and places partially enumerated in Plaintiff's Complaint above, all Defendants did also conspire to conduct and participate in said RICO *enterprise* through a *pattern of racketeering activity*, in violation of 18 U.S.C. §§ 1962(c) and (d). See also 18 USC 1708.

31. During the six (6) and a half calendar years preceding June 12<sup>th</sup>, 2018 all Defendants did cooperate jointly and severally in the commission of two (2) or more of the predicate acts that are itemized at 18 U.S.C. §§ 1961(1)(A) and (B), in violation of 18 U.S.C. 1962(d).

32. Plaintiff further alleges that all Defendants did commit two (2) or more of the offenses itemized above in a manner that they calculated and premeditated intentionally to threaten continuity, *i.e.* a continuing threat of their respective *racketeering activities*, also in violation of 18 U.S.C. 1962(d) (Prohibited activities *supra*).

33. Pursuant to 84 Stat. 947, Sec. 904, Oct. 15, 1970, the RICO laws itemized above are to be *liberally* construed by this honorable Court. Said construction rule was never codified in Title 18 of the United States Code, however. *Respondeat superior* (as explained above).

#### **COUNT FOUR:**

#### **Abuse of Process**

34. The Plaintiff realleges paragraphs 1-15 as if fully set out herein.

35. Moe's false and perjurious certification of the Proof of Service; and mail tampering, which were acts taken as agent for all Defendants, were intentional usages of the court's process for purposes other than that for which the process was intended.

1 36. The Defendants' ulterior motive was to prevent the Plaintiff from demonstrating to the  
2 State Court that he was not personally liable on the Surprise contract with Anderson.  
3 Anderson could have negotiated a personal guarantee from the Plaintiff in its original  
4 contract but failed to do so.

5  
6 37. The Plaintiff was harmed by the misuse of process by Defendants in that he incurred  
7 wrongful exposure to a massive personal liability that was extra-contractual; suffered  
8 extreme emotional distress as a result; and sustained interference with his commercial  
9 opportunities as a result.

10  
11 **COUNT FIVE:**

12 **Intentional Infliction Of Emotional Distress**

13  
14  
15 38. The Plaintiff realleges paragraphs 1-15 as if fully set out herein.

16 39. The Defendants' actions in fraudulently certifying process and fraudulently obtaining a  
17 Default Judgment against the Plaintiff despite their awareness of his Bankruptcy filing  
18 were plainly outrageous.

19  
20 40. The Defendants were aware that the Plaintiff was in a commercially and emotionally  
21 vulnerable state because of his business reverses and bankruptcy. The Defendants  
22 intended to inflict severe and unbearable emotional distress on the Plaintiff to pressure  
23 and/or extort him into a financial settlement despite the Defendants' knowledge that there  
24 was no reasonable basis for holding the Plaintiff financial liable for Surprise's contractual  
25 obligations.

26  
27 41. The Plaintiff has in fact suffered severe emotional distress as a result of the Plaintiff's  
28 acts of fraud, oppression and coercion.

**COUNT SIX:**

**Common Law Fraud**

42. The Plaintiff realleges paragraphs 1-15 as if fully set out herein.

43. Under the California Rules of Court, the Defendants had a duty to disclose their Motion for Default in the State Court Case to the Plaintiff.

44. The Defendants failed to disclose and, in fact, concealed the pendency of their Default Motion in the State Court Case.

45. The Defendants intended that the Plaintiff rely on their non-disclosure and concealment and the Plaintiff did in fact rely. Had the Plaintiff been served with the lawsuit, he would have filed a Response in State Court (His first Response would have been to move to the proper venue of San Francisco, as well as to properly deny any personal liability). Had the Plaintiff known of the pendency of the Motion for Default he would have informed the State Court of his Chapter 7 Bankruptcy that the Defendants actions violated federal court orders and were *void ab initio*.

46. The Plaintiff has been damaged by the Defendants' fraudulent omission by having a default lodged against him in a case which alleges and seeks millions of dollars for the judgment; this has caused him severe emotional distress and crippled his efforts to rebuild his business. Family law court has imputed income of \$100,000 per month to Plaintiff and the Defendants' actions and common law fraud have willfully and knowingly interfered with Plaintiff's ability to generate an income to support himself and his children.

**COUNT SEVEN:**

**Breach of Fiduciary Duty**

47. The Plaintiff realleges paragraphs 1-15 as if fully set out herein.

48. The Plaintiff retained Anderson to perform architectural, engineering and managing services, in effect to act as his expert and advisor for all project phases. Because the parties contemplated a sustained relationship over multiple projects, Anderson was also a valued partner of the Plaintiff.

49. Anderson touts itself on its web site as an expert in valuation, planning and budgeting as well as in design. Thus Anderson holds itself out as an advisor and consultant as well as a designer.

50. The Plaintiff personally reposed trust and confidence in Anderson's integrity and expertise.

51. Anderson was aware of all risks material to the Surprise project (including the risk that the team did not yet own the land) but advised the Surprise team, including the Plaintiff in the course of their only meeting, that the project was viable.

52. The Plaintiff relied on Anderson's professional advice. The Plaintiff also relied on Anderson to deal transparently and fairly with Plaintiff and with Surprise.

53. Had Anderson demanded a personal guarantee from the Plaintiff, he would have reconsidered the viability of the project and of his Anderson partnership. Anderson never asked for such a guarantee.

54. Anderson breached its fiduciary duties to the Plaintiff in at least the following ways:

- (a) Overstating the prospects for success despite Anderson's knowledge of serious obstacles;

(b) Concealing its intent to try to obtain a personal guarantee by stealth from the Plaintiff;

(c) Concealing the State Court Litigation and the unlawfully obtained Default judgment from the Plaintiff.

55. The Plaintiff has been damaged by the fiduciary breaches of Anderson identified in paragraph 54, sub-paragraphs (a) – (c) by having default lodged against him in a case which alleges and seeks millions of dollars for the judgment; this has caused him severe emotional distress and crippled his efforts to rebuild his business.

### **RELIEF REQUESTED**

*Wherefore*, pursuant to the statutes at 18 U.S.C. 1964(a) and (c), Plaintiff requests judgment against all named Defendants as follows:

### **ON COUNT ONE:**

1. That this Court liberally construe the RICO laws and thereby find that all Defendants, both jointly and severally, have acquired and maintained, both directly and indirectly, an interest in and/or control of a RICO *enterprise* of *persons* and of other individuals who were associated in fact, all of whom engaged in, and whose activities did affect, interstate and foreign commerce in violation of 18 U.S.C. 1962(b) (Prohibited activities).
2. That all Defendants and all their directors, officers, employees, agents, servants and all other *persons* in active concert or in participation with them, be enjoined *temporarily* during pendency of this action, and *permanently* thereafter, from acquiring or maintaining, whether directly or indirectly, any interest in or control of any RICO *enterprise* of *persons*, or of other individuals associated in fact, who are engaged in, or



1 whose activities do affect, interstate or foreign commerce.

2 3. That all Defendants and all of their directors, officers, employees, agents, servants and all  
3 other *persons* in active concert or in participation with them, be enjoined *temporarily*  
4 during pendency of this action, and *permanently* thereafter, from committing any more  
5 predicate acts in furtherance of the RICO *enterprise* alleged in COUNT ONE *supra*.

6  
7 4. That all Defendants be required to account for all gains, profits, and advantages derived  
8 from their several acts of *racketeering activity* in violation of 18 U.S.C. 1962(b) and from  
9 all other violation(s) of applicable State and federal law(s).

10 5. That judgment be entered for Plaintiff and against all Defendants for Plaintiff's actual  
11 damages, and for any gains, profits, or advantages attributable to all violations of 18  
12 U.S.C. 1962(b), according to the best available proof.

13  
14 6. That all Defendants pay to Plaintiff treble (triple) damages, under authority of 18 U.S.C.  
15 1964(c), for any gains, profits, or advantages attributable to all violations of 18 U.S.C.  
16 1962(b), according to the best available proof.

17 7. That all Defendants pay to Plaintiff all damages sustained by Plaintiff in consequence of  
18 Defendants' several violations of 18 U.S.C. 1962(b), including Plaintiff's emotional  
19 distress according to the best available proof.

20  
21 8. That all Defendants pay to Plaintiff his costs of the lawsuit incurred herein including, but  
22 not limited to, all necessary research, photocopies, mail, travel, service, all non-judicial  
23 enforcement and all reasonable fees including any paralegal help Plaintiff may employ.

24 9. That all damages caused by all Defendants, and all gains, profits, and advantages derived  
25 by all Defendants, from their several acts of racketeering in violation of 18 U.S.C.  
26 1962(b) and from all other violation(s) of applicable State and federal law(s), be deemed  
27 to be held in constructive trust, legally foreign with respect to the federal zone [*sic*], for  
28

the benefit of Plaintiff, his heirs and assigns.

10. That Plaintiff have such other and further relief as this Court deems just and proper, under the circumstances of this action.

**ON COUNT TWO:**

1. That this Court liberally construe the RICO laws and thereby find that all Defendants have associated with a RICO *enterprise of persons* and of other individuals who were associated in fact, all of whom did engage in, and whose activities did affect, interstate and foreign commerce in violation of the RICO law at 18 U.S.C. 1962(c) (Prohibited activities).
2. That this Court liberally construe the RICO laws and thereby find that all Defendants have conducted and/or participated, directly or indirectly, in the affairs of said RICO *enterprise* through a *pattern of racketeering activity* in violation of the RICO laws at 18 U.S.C. §§ 1961(5) ("pattern" defined) and 1962(c) *supra*.
3. That all Defendants and all of their directors, officers, employees, agents, servants and all other *persons* in active concert or in participation with them, be enjoined *temporarily* during pendency of this action, and *permanently* thereafter, from associating with any RICO *enterprise of persons*, or of other individuals associated in fact, who do engage in, or whose activities do affect, interstate and foreign commerce.
4. That all Defendants and all of their directors, officers, employees, agents, servants and all other *persons* in active concert or in participation with them, be enjoined *temporarily* during pendency of this action, and *permanently* thereafter, from conducting or participating, either directly or indirectly, in the conduct of the affairs of any RICO *enterprise* through a *pattern of racketeering activity* in violation of the RICO laws at 18

1 U.S.C. §§ 1961(5) and 1962(c) *supra*.

2 5. That all Defendants and all of their directors, officers, employees, agents, servants and all  
3 other *persons* in active concert or in participation with them, be enjoined *temporarily*  
4 during pendency of this action, and *permanently* thereafter, from committing any more  
5 predicate acts in furtherance of the RICO *enterprise* alleged in COUNT TWO *supra*.

6 6. That all Defendants be required to account for all gains, profits, and advantages derived  
7 from their several acts of racketeering in violation of 18 U.S.C. 1962(c) *supra* and from  
8 all other violation(s) of applicable State and federal law(s).

9 7. That judgment be entered for Plaintiff and against all Defendants for Plaintiff's actual  
10 damages, and for any gains, profits, or advantages attributable to all violations of 18  
11 U.S.C. 1962(c) *supra*, according to the best available proof.

12 8. That all Defendants pay to Plaintiff treble (triple) damages, under authority of 18 U.S.C.  
13 1964(c), for any gains, profits, or advantages attributable to all violations of 18 U.S.C.  
14 1962(c) *supra*, according to the best available proof.

15 9. That all Defendants pay to Plaintiff all damages sustained by Plaintiff in consequence of  
16 Defendants' several violations of 18 U.S.C. 1962(c) *supra*, including Plaintiff's  
17 emotional distress according to the best available proof.

18 10. That all Defendants pay to Plaintiff his costs of the lawsuit incurred herein including, but  
19 not limited to, all necessary research, all non-judicial enforcement and all reasonable  
20 fees.

21 11. That all damages caused by all Defendants, and all gains, profits, and advantages derived  
22 by all Defendants, from their several acts of racketeering in violation of 18 U.S.C.  
23 1962(c) *supra* and from all other violation(s) of applicable State and federal law(s), be  
24 deemed to be held in constructive trust, legally foreign with respect to the federal zone  
25  
26  
27  
28

[sic], for the benefit of Plaintiff, his heirs and assigns.

12. That Plaintiff have such other and further relief as this Court deems just and proper, under the full range of relevant circumstances which have occasioned the instant action.

**ON COUNT THREE:**

1. That this Court liberally construe the RICO laws and thereby find that all Defendants have conspired to acquire and maintain an interest in, and/or conspired to acquire and maintain control of, a RICO *enterprise* engaged in a *pattern of racketeering activity* in violation of 18 U.S.C. §§ 1961(5), 1962(b) and (d) *supra*.
2. That this Court liberally construe the RICO laws and thereby find that all Defendants have conspired to conduct and participate in said RICO *enterprise* through a *pattern of racketeering activity* in violation of 18 U.S.C. §§ 1961(5), 1962(c) and (d) *supra*.
3. That all Defendants and all their directors, officers, employees, agents, servants and all other *persons* in active concert or in participation with them, be enjoined *temporarily* during pendency of this action, and *permanently* thereafter, from conspiring to acquire or maintain an interest in, or control of, any RICO *enterprise* that engages in a *pattern of racketeering activity* in violation of 18 U.S.C. §§ 1961(5), 1962(b) and (d) *supra*.
4. That all Defendants and all their directors, officers, employees, agents, servants and all other *persons* in active concert or in participation with them, be enjoined *temporarily* during pendency of this action, and *permanently* thereafter, from conspiring to conduct, participate in, or benefit in any manner from any RICO *enterprise* through a *pattern of racketeering activity* in violation of 18 U.S.C. §§ 1961(5), 1962(c) and (d) *supra*.

- 1 5. That all Defendants and all their directors, officers, employees, agents, servants and all  
2 other *persons* in active concert or in participation with them, be enjoined *temporarily*  
3 during pendency of this action, and *permanently* thereafter, from committing any more  
4 predicate acts in furtherance of the RICO *enterprise* alleged in COUNT THREE *supra*.
- 5 6. That all Defendants be required to account for all gains, profits, and advantages derived  
6 from their several acts of racketeering in violation of 18 U.S.C. 1962(d) *supra* and from  
7 all other violation(s) of applicable State and federal law(s).
- 8 7. That judgment be entered for Plaintiff and against all Defendants for Plaintiff's actual  
9 damages, and for any gains, profits, or advantages attributable to all violations of 18  
10 U.S.C. 1962(d) *supra*, according to the best available proof.
- 11 8. That all Defendants pay to Plaintiff treble (triple) damages, under authority of 18 U.S.C.  
12 1964(c), for any gains, profits, or advantages attributable to all violations of 18 U.S.C.  
13 1962(d) *supra*, according to the best available proof.
- 14 9. That all Defendants pay to Plaintiff all damages sustained by Plaintiff in consequence of  
15 Defendants' several violations of 18 U.S.C. 1962(d) *supra*, including Plaintiff's  
16 emotional distress and loss of business opportunities according to the best available  
17 proof.
- 18 10. That all Defendants pay to Plaintiff his costs of the lawsuit incurred herein including, but  
19 not limited to, all necessary research, all non-judicial enforcement, and all reasonable  
20 fees.
- 21 11. That all damages caused by all Defendants, and all gains, profits, and advantages derived  
22 by all Defendants, from their several acts of racketeering in violation of 18 U.S.C.  
23 1962(d) *supra* and from all other violation(s) of applicable State and federal law(s), be  
24 deemed to be held in constructive trust, legally foreign with respect to the federal zone  
25  
26  
27  
28

1 [sic], for the benefit of Plaintiff, his heirs and assigns.

- 2 12. That Plaintiff have such other and further relief as this Court deems just and proper,  
3 under the full range of relevant circumstances which have occasioned the instant action.  
4

5  
6 **ON COUNT FOUR:**

- 7 1. That the Defendants be held liable for all direct and consequential harm sustained by the  
8 Plaintiff flowing from their Abuse of Process including interference with ongoing  
9 business expectations, according to the best available proof.  
10  
11 2. That this Court impose punitive, or exemplary damages on the Defendants in an amount  
12 sufficient to punish and deter the Defendants from engaging in similar litigation abuses in  
13 the future. This Plaintiff asks the Court to consider the enormous scope of operations of  
14 SC Anderson and HV and to ensure that the financial punishment for these improper and  
15 illegal acts be large enough as to deter any thought of similar activities in the future.  
16  
17 3. That Plaintiff have such other and further relief as this Court deems just and proper,  
18 under the full range of relevant circumstances which have occasioned the instant action.  
19

20 **ON COUNT FIVE:**

- 21 1. That the Defendants be held liable for all direct and consequential harm sustained by the  
22 Plaintiff flowing from their intentional infliction of emotional distress on Plaintiff  
23 including interference with ongoing business expectations, according to the best available  
24 proof.  
25  
26 2. That this Court impose punitive, or exemplary damages on the Defendants in an amount  
27 sufficient to punish and deter the Defendants from engaging in similar outrageous  
28 conduct in the future.



- 1 3. That Plaintiff have such other and further relief as this Court deems just and proper,  
2 under the full range of relevant circumstances which have occasioned the instant action.  
3

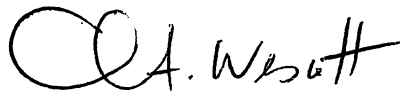
4  
5 **ON COUNT SIX:**

- 6 4. That the Defendants be held liable for all direct and consequential harm sustained by the  
7 Plaintiff flowing from their acts of fraudulent concealment directed at Plaintiff including  
8 interference with ongoing business expectations, according to the best available proof.  
9 5. That this Court impose punitive, or exemplary damages on the Defendants in an amount  
10 sufficient to punish and deter the Defendants from engaging in similar fraudulent conduct  
11 in the future.  
12 6. That Plaintiff have such other and further relief as this Court deems just and proper,  
13 under the full range of relevant circumstances which have occasioned the instant action.  
14

15  
16 **ON COUNT SEVEN:**

- 17 7. That the Defendants be held liable for all direct and consequential harm sustained by the  
18 Plaintiff flowing from their acts of fiduciary breach directed at Plaintiff including  
19 interference with ongoing business expectations, according to the best available proof.  
20 8. That this Court impose punitive, or exemplary damages on the Defendants in an amount  
21 sufficient to punish and deter the Defendants from engaging in similar acts of fiduciary  
22 breach in the future.  
23 9. That Plaintiff have such other and further relief as this Court deems just and proper,  
24 under the full range of relevant circumstances which have occasioned the instant action.

25 RESPECTFULLY SUBMITTED on June 12<sup>th</sup>, 2018.

26  
27   
28 Carl A. Wescott. Pro Se 6/12

# SUMMONS (CITACION JUDICIAL)

SUM-100

## NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

SURPRISE DEVELOPMENT, INC., a California corporation, SUNEET SINGAL, an individual, CARL WESCOTT, an individual,  
(See Additional Parties Attachment)

## YOU ARE BEING SUED BY PLAINTIFF:

## (LO ESTÁ DEMANDANDO EL DEMANDANTE):

S.C. ANDERSON, INC., a California corporation

FOR COURT USE ONLY (SOLO PARA USO DE LA CORTE)	
<b>FILED</b>	
MADERA SUPERIOR COURT	
MAR 15 2018	
BONNIE THOMAS	CLERK
	DEPUTY

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), the California Courts Online Self-Help Center ([www.courtinfo.ca.gov/selfhelp](http://www.courtinfo.ca.gov/selfhelp)), or by contacting your local court or county bar association. NOTE: The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

**AVISO!** Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted puede usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte lo podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services ([www.lawhelpcalifornia.org](http://www.lawhelpcalifornia.org)), en el Centro de Ayuda de las Cortes de California ([www.sucorte.ca.gov](http://www.sucorte.ca.gov)) o poniéndose en contacto con la corte o el colegio de abogados locales. AVISO: Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 o más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of the State of California, County of Madera  
200 South "G" Street  
Madera, CA 93637

CASE NUMBER: (Número del Caso):  
MCV070794

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

George F. Vogt, Jr./SDN 107310 HERRIG & VOGT, LLP  
4210 Douglas Blvd., Suite 100 916-960-1000  
Granite Bay, CA 95746

DATE: MAR 15 2018

(Fecha)

BONNIE THOMAS

Clerk, by  
(Secretario)

CRITTANY VELAZQUEZ

Deputy  
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

(SEAL)



NOTICE TO THE PERSON SERVED: You are served

1. ☒ as an individual defendant. Carl Wescott, an individual  
2. ☐ as the person sued under the fictitious name of (specify):

3. ☐ on behalf of (specify):

- under: ☐ CCP 416.10 (corporation)  
☐ CCP 416.20 (defunct corporation)  
☐ CCP 416.40 (association or partnership)  
☐ other (specify):

- ☐ CCP 416.60 (minor)  
☐ CCP 416.70 (conservatee)  
☐ CCP 416.90 (authorized person)

4. ☐ by personal delivery on (date):

Form Approved for Mandatory Use  
Judicial Branch of California  
Sum 100 (Rev. July 1, 2017)

ETB Essential  
Forma

SUMMONS

S.C. ANDERSON

Page 1 of 1  
Code of Civil Procedure §§ 412.20-465  
[www.courtinfo.ca.gov](http://www.courtinfo.ca.gov)

SUM-200(A)

<b>SHORT TITLE:</b> S.C. ANDERSON, INC. v. SURPRISE DEVELOPMENT, INC., Et al.	<b>CASE NUMBER:</b> MCV070794
--	----------------------------------

**INSTRUCTIONS FOR USE**

- This form may be used as an attachment to any summons if space does not permit the listing of all parties on the summons.
- If this attachment is used, insert the following statement in the plaintiff or defendant box on the summons: "Additional Parties Attachment form is attached."

List additional parties (Check only one box. Use a separate page for each type of party.):

☐ Plaintiff
 ☒ Defendant
 ☐ Cross-Complainant
 ☐ Cross-Defendant

STERLING PACIFIC LENDING, INC., a California corporation, dba STERLING PACIFIC FINANCIAL, JOSHUA FISCHER, an individual, STERLING REAL ESTATE PARTNERS II, LLC, a California limited liability company, R. WAYNE MOLES, an individual, LARRY PISTORESI, JR., an individual, GERALD FISCHER, an individual, VILLA DEL SOL SENIOR HOUSING, LLC, a California limited liability company, and DOES 1 through 100, inclusive

Page 2 of 2

Page 1 of 1

Form Adopted for Mandatory Use  
 Judicial Council of California  
 SUM-200(A) (Rev. January 1, 2007)

CLB Essential  
 ccb.com Forms

**ADDITIONAL PARTIES ATTACHMENT**

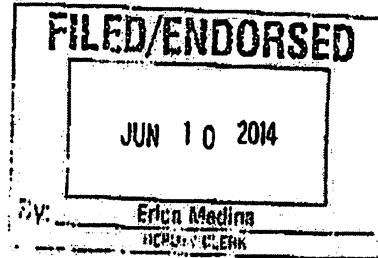
Attachment to Summons

S.C. ANDERSON

EXHIBIT A

GEORGE F. VOGT, JR. (SBN 107310)  
GINA L. MOYLES (SBN 208222)  
**HERRIG & VOGT, LLP**  
4210 Douglas Boulevard, Suite 100  
Granite Bay, CA 95746  
Telephone: (916) 960-1000  
Facsimile: (916) 960-1005

Attorneys for Plaintiff,  
S.C. ANDERSON, INC., a California corporation



**IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA**  
**COUNTY OF SACRAMENTO**

S.C. ANDERSON, INC., a California  
corporation,

Plaintiff,

vs.

SURPRISE DEVELOPMENT, INC. a California  
corporation, SUNEET SINGAL, an individual,  
CARL WISCOTT, an individual, STERLING  
PACIFIC LENDING, INC., a California  
corporation, dba STERLING PACIFIC  
FINANCIAL, JOSHUA FISCHER, an  
individual, STERLING REAL ESTATE  
PARTNERS II, LLC, a California limited  
liability company, R. WAYNE MOLES, an  
individual, LARRY PISTORESI, JR., an  
individual, GERALD FISCHER, an individual,  
VILLA DEL SOL SENIOR HOUSING, LLC, a  
California limited liability company, and DOES  
1 through 100, inclusive,

Defendants.

Case No: 34-2012-00123353

**THIRD AMENDED COMPLAINT FOR:**

- 1. BREACH OF CONTRACT**
- 2. MONEY LENT**
- 3. INTENTIONAL MISREPRESENTATION**
- 4. NEGLIGENT MISREPRESENTATION**
- 5. CIVIL CONSPIRACY**
- 6. THEFT/CONVERSION**

**BY FAX**

Plaintiff, S.C. ANDERSON, INC., a California corporation (hereinafter referred to as  
"ANDERSON") alleges as follows:

**GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION**

1. ANDERSON is, and at all times herein mentioned was, a corporation organized and  
existing under the laws of the State of California, with its principal place of business in Kern County,  
California, engaged in the business of providing general contracting services and duly licensed by the

1 GEORGE F. VOGT, JR. (SBN 107310)  
 2 GINA L. MOYLES (SBN 208222)  
 3 HERRIG & VOGT, LLP  
 4 4210 Douglas Boulevard, Suite 100  
 Granite Bay, CA 95746  
 Telephone: (916) 960-1000  
 Facsimile: (916) 960-1005

5 Attorneys for Plaintiff,  
 6 S.C. ANDERSON, INC., a California corporation

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GOSSEL COURT HOUSE  
 SUPERIOR COURT OF CALIFORNIA,  
 COUNTY OF SACRAMENTO

7  
 8 IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA  
 9 COUNTY OF SACRAMENTO

10 S.C. ANDERSON, INC., a California  
 11 corporation,

12 Plaintiff,

13 vs.

14 SURPRISE DEVELOPMENT, INC. a California  
 15 corporation, SUNEET SINGAL, an individual,  
 16 CARL WESCOTT, an individual, STERLING  
 17 PACIFIC LENDING, INC., a California  
 18 corporation, dba STERLING PACIFIC  
 19 FINANCIAL, JOSHUA FISCHER, an  
 20 individual, STERLING REAL ESTATE  
 21 PARTNERS II, LLC, a California limited  
 22 liability company, R. WAYNE MOLES, an  
 23 individual, LARRY PISTORESI, JR., an  
 24 individual, GERALD FISCHER, an individual,  
 25 VILLA DEL SOL SENIOR HOUSING, LLC, a  
 26 California limited liability company, and DOES  
 27 1 through 100, inclusive,

28 Defendants.

Case No: 34-2012-00123353

THIRD AMENDED COMPLAINT FOR:

1. BREACH OF CONTRACT
2. MONEY LENT
3. INTENTIONAL MISREPRESENTATION
4. NEGLIGENT MISREPRESENTATION
5. CIVIL CONSPIRACY
6. THEFT/CONVERSION

BY FAX

23 Plaintiff, S.C. ANDERSON, INC., a California corporation (hereinafter referred to as  
 24 "ANDERSON") alleges as follows:

25 GENERAL ALLEGATIONS COMMON TO ALL CAUSES OF ACTION

26 1. ANDERSON is, and at all times herein mentioned was, a corporation organized and  
 27 existing under the laws of the State of California, with its principal place of business in Kern County,  
 28 California, engaged in the business of providing general contracting services and duly licensed by the

Herrig & Vogt, LLP  
 Attorneys at Law  
 4210 Douglas Blvd., Ste. 100, Granite Bay, CA 95746-5902



1 California Contractors State License Board at all times relevant to this action.

2 2. ANDERSON is informed and believes and thereon alleges that defendant CARL  
3 WESCOTT and DOES 1 through 100 (hereinafter "WESCOTT") is, and at all times herein mentioned  
4 was, an individual residing in California and was at the time of the actions alleged in this Complaint.  
5 holding himself out as President of defendant SURPRISE DEVELOPMENT, INC.

6 3. ANDERSON is informed and believes and thereon alleges that defendant SUNEET  
7 SINGAL and DOES 1 through 100 (hereinafter "SINGAL") is, and at all times herein mentioned was,  
8 an individual residing in California and was at the time of the actions alleged in this Complaint,  
9 holding himself out as a partner and owner of defendant SURPRISE DEVELOPMENT, INC.

10 4. ANDERSON is informed and believes and thereon alleges that defendant SURPRISE  
11 DEVELOPMENT, INC. and DOES 1 through 100 (hereinafter "SURPRISE") is, and at all times  
12 herein mentioned was, a California corporation organized and existing under the laws of the State of  
13 California with its principal place of business in San Francisco County, California.

14 5. ANDERSON is informed and believes and thereon alleges that defendant JOSHUA  
15 FISCHER and DOES 1 through 100 (hereinafter "JFISCHER") is, and at all times herein mentioned  
16 was, an individual residing in California and was at the time of the actions alleged in the Complaint,  
17 holding himself out as President of defendant STERLING PACIFIC LENDING, INC. and managing  
18 member of defendant STERLING REAL ESTATE PARTNERS II, LLC.

19 6. ANDERSON is informed and believes and thereon alleges that defendant GERALD  
20 FISCHER and DOES 1 through 100 (hereinafter "GFISCHER") is, and at all times herein mentioned  
21 was, an individual residing in California and was at the time of the actions alleged in the Complaint  
22 acting as managing member of defendant STERLING REAL ESTATE PARTNERS II, LLC.

23 7. ANDERSON is informed and believes and thereon alleges that defendant STERLING  
24 PACIFIC LENDING, INC. dba STERLING PACIFIC FINANCIAL and DOES 1 through 100  
25 (hereinafter "STERLING, INC.") is, and at all times herein mentioned was, a California corporation  
26 organized and existing under the laws of the State of California with its principal place of business in  
27 Santa Cruz County, California.

28 ///



1           8.     ANDERSON is informed and believes and thereon alleges that defendant STERLING  
2 REAL ESTATE PARTNERS II, LLC and DOES 1 through 100 (hereinafter "STERLING, LLC") is,  
3 and at all times herein mentioned was, a limited liability company organized and existing under the  
4 laws of the State of California with its principal place of business in Fresno County, California.

5           9.     ANDERSON is informed and believes and thereon alleges that defendant R. WAYNE  
6 MOLES and DOES 1 through 100 (hereinafter "MOLES") is, and at all times herein mentioned was,  
7 an individual residing in California and was at the time of the actions alleged in this Complaint,  
8 holding himself out as President and managing member of defendant VILLA DEL SOL SENIOR  
9 HOUSING, LLC.

10          10.    ANDERSON is informed and believes and thereon alleges that defendant LARRY  
11 PISTORESI, JR. and DOES 1 through 100 (hereinafter "PISTORESI") is, and at all times herein  
12 mentioned was, an individual residing in California and was at the time of the actions alleged in this  
13 Complaint, holding himself out as Secretary and managing member of defendant VILLA DEL SOL  
14 SENIOR HOUSING, LLC.

15          11.    ANDERSON is informed and believes and thereon alleges that defendant VILLA DEL  
16 SOL SENIOR HOUSING, LLC and DOES 1 through 100 (hereinafter "VILLA DEL SOL") is, and at  
17 all times herein mentioned was, a California limited liability company organized and existing under  
18 the laws of the State of California with its principal place of business in Madera County, California.

19          12.    ANDERSON is informed and believes and thereon alleges that there exists and at all  
20 times herein mentioned existed a unity of interest and ownership between SINGAL, WESCOTT and  
21 SURPRISE, and each of them (hereinafter "SURPRISE GROUP"), such that any individuality and  
22 separateness between them have ceased, and that each of the above-named parties is the alter-ego of  
23 the other in the matters alleged herein, in that the assets and management have been intermingled,  
24 formalities have not been maintained, and a separate identity is merely a shell in order to evade  
25 liability. Adherence to the fiction of the separate existence of SINGAL, WESCOTT, and SURPRISE,  
26 and each of them, as separate entities separate and distinct from the other would promote an injustice  
27 in that they acted in concert in a scheme to defraud and deceive and conspired together to fraud and  
28 deceive ANDERSON.

1           13.     ANDERSON is informed and believes and thereon alleges that there exists and at all  
2 times herein mentioned existed a unity of interest and ownership between GFISCHER, JFISCHER,  
3 STERLING, LLC, and STERLING, INC., and each of them (hereinafter "STERLING GROUP"),  
4 such that any individuality and separateness between them have ceased, and that each of the above-  
5 named parties is the alter-ego of the other in the matters alleged herein, in that the assets and  
6 management have been intermingled, formalities have not been maintained, and a separate identity is  
7 merely a shell in order to evade liability. Adherence to the fiction of the separate existence of  
8 GFISCHER, JFISCHER, STERLING, LLC, and STERLING, INC., and each of them, as separate  
9 entities separate and distinct from the other would promote an injustice in that they acted in concert in  
10 a scheme to defraud and deceive and conspired together to fraud and deceive ANDERSON.

11           14.     ANDERSON is informed and believes and thereon alleges that there exists and at all  
12 times herein mentioned existed a unity of interest and ownership between MOLES, PISTORESI, and  
13 VILLA DEL SOL, and each of them (hereinafter "VILLA DEL SOL GROUP"), such that any  
14 individuality and separateness between them have ceased, and that each of the above-named parties is  
15 the alter-ego of the other in the matters alleged herein, in that the assets and management have been  
16 intermingled, formalities have not been maintained, and a separate identity is merely a shell in order to  
17 evade liability. Adherence to the fiction of the separate existence of MOLES, PISTORESI, and  
18 VILLA DEL SOL, and each of them, as separate entities separate and distinct from the other would  
19 promote an injustice in that they acted in concert in a scheme to defraud and deceive and conspired  
20 together to fraud and deceive ANDERSON.

21           15.     The true names and capacities, whether individual, corporate, associate, or otherwise of  
22 Defendants DOES 1 through 100, inclusive, are unknown to ANDERSON at this time, and  
23 ANDERSON therefore sues said defendants and each of them by such fictitious names. ANDERSON  
24 will seek leave to amend this Complaint to show their true names and capacities when the same has  
25 been ascertained.

26           16.     ANDERSON is informed and believes and thereon alleges that each of the Defendants  
27 named herein, including Defendants sued by such fictitious names are, and at all times herein  
28 mentioned were, the duly authorized agent of each other Defendant and in doing the things herein

1 mentioned, Defendants and each of them, were acting within the course and scope of said agency, that  
 2 said Defendants, including fictitiously named Defendants, are responsible in some manner for the  
 3 breaches and defaults herein alleged, and that ANDERSON's damages herein alleged were caused by  
 4 said Defendants.

5 17. Defendants DOES 1 through 100, inclusive, have, or claim to have, an interest in THE  
 6 PROPERTY, the exact nature of which is unknown to ANDERSON. ANDERSON is ignorant of the  
 7 true names, interests, rights, and capacities of defendants sued as DOES I through 100, inclusive, and  
 8 therefore sues these defendants by those fictitious names. ANDERSON will amend this complaint to  
 9 allege their true names, rights, interests, and capacities when they are ascertained.

10 18. ANDERSON is informed and believes and thereon alleges that on or about March 5,  
 11 2008, VILLA DEL SOL became owners of the real property located in Chowchilla, California that is  
 12 the subject of this action, which is known as APN: 014-020-031 and legally described as Lot 94 of  
 13 Tract No. 05-07, Montgomery Farms – Phase 1, according to the map thereof recorded August 9, 2006  
 14 in Book 56 Pages 52 through 59 of Maps, Madera County Records (hereinafter "THE PROPERTY").

15 19. ANDERSON is informed and believes and thereon alleges that on or about March 20,  
 16 2008, VILLA DEL SOL executed a Deed of Trust against THE PROPERTY in favor of STERLING,  
 17 INC. to secure the payment of a debt (hereinafter "STERLING GROUP's DEED OF TRUST")  
 18 memorialized in a written promissory note in the amount of \$2,470,000 (hereinafter "Sterling Note").  
 19 ANDERSON is informed and believes and thereon alleges that pursuant to the terms of the above  
 20 promissory note, VILLA DEL SOL's entire loan amount of \$2,470,000 was to be re-paid by October  
 21 1, 2008.

22 20. ANDERSON is informed and believes and thereon alleges that on or about February  
 23 18, 2009 STERLING, INC. recorded a Notice of Default against THE PROPERTY because VILLA  
 24 DEL SOL defaulted on the Sterling Note.

25 21. ANDERSON is informed and believes and thereon alleges that in and around March  
 26 2009, the STERLING GROUP introduced SINGAL to MOLES and PISTORESINI to begin discussions  
 27 regarding the formation of a joint venture to develop THE PROPERTY into an assisted living facility.  
 28 ANDERSON is informed and believes and thereon alleges that at all times relevant to these

1 discussions. the STERLING GROUP and the SURPRISE GROUP were acting in concert to convince  
2 MOLES and PISTORESI to form a joint venture with the SURPRISE GROUP where MOLES and  
3 PISTORESI would surrender seventy-five (75%) to eighty-five (85%) of their ownership interest in  
4 THE PROPERTY (which was in default) in exchange for SINGAL's services to develop THE  
5 PROPERTY into an assisted living facility and obtain HUD financing/funding for the project.  
6 SINGAL was also to ensure that STERLING GROUP's DEED OF TRUST was paid off.

7 22. ANDERSON is informed and believes and thereon alleges that at all times relevant to  
8 this action the STERLING GROUP and the SURPRISE GROUP were members of a joint venture that  
9 was formed for the common purpose of developing an assisted living facility in Chowchilla,  
10 California located on THE PROPERTY (hereinafter "Joint Venture").

11 23. ANDERSON is informed and believes and thereon alleges that on or about April 15,  
12 2009, the SURPRISE GROUP as part of the Joint Venture, approached Steven Anderson in Kern  
13 County and proposed a project wherein ANDERSON would advance the funds for architectural  
14 design drawings prepared by ANDERSON sufficient to obtain HUD funding for the above assisted  
15 living facility on THE PROPERTY.

16 24. At all times during contract negotiations between ANDERSON and the SURPRISE  
17 GROUP that occurred on or about April 15, 2009 through on or about July 30, 2009 regarding the  
18 above project, SINGAL and WESCOTT misrepresented to ANDERSON that SURPRISE was the  
19 owner of THE PROPERTY, and concealed the fact that THE PROPERTY was in foreclosure to  
20 STERLING INC. ANDERSON is informed and believes and thereon alleges that the above  
21 misrepresentation and/or concealment were made in furtherance of the Joint Venture.

22 25. During the above contract negotiations and in order to convince ANDERSON to enter  
23 into a contract with SURPRISE, SINGAL and WESCOTT misrepresented that SURPRISE as owner  
24 would execute a Deed of Trust in favor of ANDERSON to secure all costs incurred by ANDERSON  
25 for design-related services for the above assisted living facility project so that ANDERSON would  
26 receive payment for its work irrespective of whether the HUD funding was secured or not.  
27 ANDERSON is informed and believes and thereon alleges that the above misrepresentation was made  
28 in furtherance of the Joint Venture.

1           26. In reliance on the above representations and the concealment by SINGAL, SURPRISE,  
2 and WESCOTT, on or about July 30, 2009 ANDERSON entered into an agreement with SURPRISE  
3 in Kern County for ANDERSON to provide design-related services for the assisted living facility to  
4 be constructed on THE PROPERTY (hereinafter "Agreement"). A true and correct copy of the  
5 Agreement is attached hereto as Exhibit A. The Agreement contained the following terms:

6           (1) Section 6.2.2.5 of the Agreement stated that in order to secure payment of  
7 preconstruction services provided by ANDERSON, SURPRISE shall execute a deed of  
8 trust against THE PROPERTY in the form attached as Exhibit A to the Agreement.  
9 The deed of trust attached as Exhibit A to the Agreement stated SURPRISE was the  
10 owner of THE PROPERTY.

11           (2) Section 10.3 of the General Conditions of the Agreement provided that in the  
12 event of litigation arising out of or relating to the Agreement, the prevailing party is  
13 entitled to reasonable attorneys fees and expenses.

14           27. On or about August 7, 2009 SURPRISE signed the Agreement. ANDERSON is  
15 informed and believes and thereon alleges that SURPRISE entered into the Agreement in furtherance  
16 of the Joint Venture.

17           28. On or about August 14, 2009, ANDERSON learned for the first time that SURPRISE  
18 did not own THE PROPERTY when SINGAL sent an email to ANDERSON stating:

19           "I just got a call from the land lender on Chowchilla saying they were foreclosing on  
20 the previous partner and taking them out. Surprise will control the asset 100% instead  
21 of the partnership split. Hold off on the deed of trust for a few weeks since it will  
22 probably end up being signed by the bank if the other group loses control of the asset. I  
was going to have you send them the deed, but wasn't aware they were being taken out  
of the deal by their bank. It is great for our group and the bank, but not the previous  
developer."

23           29. On or about August 17, 2009, SINGAL emailed ANDERSON the owner's information  
24 for THE PROPERTY so the deed of trust could be revised to reflect the true owner of THE  
25 PROPERTY, VILLA DEL SOL. SINGAL provided further assurances to ANDERSON stating that  
26 THE PROPERTY will likely go through foreclosure but in any case a new deed will be issued to  
27 ANDERSON because SURPRISE would be the owner. ANDERSON is informed and believes and  
28 thereon alleges that SINGAL made the above assurances to ANDERSON in furtherance of the Joint